IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.11305 of 1999

S.N.Rajan .. Petitioner

vs.

1. The State of Tamil Nadu,
   rep. by its Secretary to Government,
   Industries Department,
   Fort St.George,
   Chennai-600 009.

2. The Commissioner and Director of
   Industries and Commerce,
   Chepauk, Chennai-5.

3. The Managing Director,
   Tamil Nadu Co-operative Milk Producers
   Federation Limited,
   Aavin Illam, Milk Colony,
   Chennai-600 051.

4. The Tamil Nadu Administrative Tribunal,
   rep. by its Registrar,
   High Court, Chennai-104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the orders of Tamil Nadu Administrative Tribunal in O.A.No.4381 of 1997, dated 4.11.1998 and quash the same and direct the respondents to treat the petitioner as Government Employee and pay him all attendant benefits due to him.

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For petitioner : M/s.A.Arulmozhi
For respondents 1 & 2: Mr.M.Dhandapani,Spl.G.P
For respondent-3 : Mr.R.Madanagopal

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ORDER

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J)

The petitioner seeks to challenge the order of the Tamil Nadu Administrative Tribunal, dated 4.11.1998 in O.A.No.4381 of 1997, in and by which the Tribunal dismissed the petitioner's Original Application.

2. Brief facts which are required to be stated are that the petitioner joined the services of the State Government as Junior Assistant in the Department of Industries and Commerce in the year 1960 and was subsequently promoted as Assistant in the year 1963 and further promoted as Commercial Accountant in the year 1984.

3. In the year 1977, he was selected for appointment as Superintendent in the foreign service in the Tamil Nadu Dairy Development Corporation (hereinafter referred to as 'the Corporation') and the petitioner joined the Corporation on 17.11.1977 as Commercial Assistant Grade-II which was equivalent to the post of Superintendent. The Corporation, by its letter dated 7.7.1979, called upon the petitioner to furnish his option to continue in the services of the Corporation. The petitioner exercised his option on 16.7.1979 for permanent absorption in the Corporation, subject to the condition that his pay should be re-fixed on par with the similarly placed persons. The said option was withdrawn by him since there was a move for converting the Corporation into a Co-operative Federation. His request for reverting him back to the parent Department was not considered on the ground that there was no vacancy at that point of time. The deputation of the petitioner was periodically extended upto 1983.

4. In G.O.Ms.No.555, Agriculture Department, dated 31.3.1980, the formation of the third respondent came to be made. The Corporation resolved to transfer all its activities from Corporation to Federation with all its assets and liabilities with effect from 1.2.1981. In G.O.Ms.1000, Agriculture Department, dated 2.6.1978. all the employees of the Corporation including the deputationist were transferred to the third respondent-Federation on and from 1.2.1981 in the same cadre which they were holding in the Corporation. Subsequently, in G.O.Ms.No.1921, Agriculture (MP-I) Department, dated 8.11.1983, the first respondent-State Government, after examining the request of the third respondent-Federation, formulated a Scheme and directed the terminal benefits to be given to the Government employees who opted for permanent absorption in the third respondent-Federation. Paragraphs 5,6 and 7 of G.O.Ms.No.1921, dated 8.11.1983 are relevant for our purpose, which read as under:

> "5. Options will be obtained from Government servants working in Tamilnadu Cooperative Milk Prods. Fedn. on the basis of this Govt. Order. The Tamilnadu Coop. Milk Prods. Fedn. is requested to decide absorption of Govt. servant on the basis of the

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terminal benefits indicated in this Government Order. As at present, the employees cannot claim absorption in Tamilnadu Coop. Milk Producers' Fedn. as a matter of right; the Tamilnadu Coop. Milk Producers' Federation has the right to accept or reject the options. The proposal to absorb persons in Tamilnadu Coop. Milk Producers' Fedn. Ltd. may be placed before the Board of Management indicating details of persons who have opted for service in the Tamilnadu Coop. Milk Producers' Fedn. Ltd., persons, whom the Tamilnadu Coop. Milk Producers' Federation has decided to absorb, and persons, whom the Tamilnadu Coop. Milk Prods. Federation has decided not to absorb and revert to their parent departments. The Tamilnadu Coop. Milk Producers' Federation is requested to finalise the absorption on the basis of the decision of the Board of Directors and get the prior concurrence of Head of the Department or (where the appointing authority is Government) the Government.

6. Once a Government employee opts for absorption in Tamilnadu Cooperative Milk Prods. Fedn., and his option is accepted by the Tamilnadu Coop. Milk Prods. Fedn. and agreed to by Head of the Department/Government, the authority competent to sanction pension will arrange to settle the terminal benefits of the absorbed employee. The gratuity and pension will be settled in the usual manner in which these claims are settled to retired Government employees and debited to the relevant head, subject, however, to the condition that the employee option for Tamilnadu Coop. Milk Producers' Fedn.'s service under this Govt. Order will get the pension/commuted value of pension only after the employee retires from the service of the Tamilnadu Cooperative Milk Producers' Federation.

7. Secretaries to Government/Heads of Depts. are requested to review the progress of absorption of persons in Tamilnadu Coop. Milk Producers' Fedn. and the settlement of their terminal benefits periodically and see that speedy action is taken at all levels."

5. Closely followed by that, there was a communication from the second respondent to the third respondent-Federation, dated 28.12.1985, which refers to G.O.Ms.No.1921, dated 8.11.1983 and the other correspondence between the first respondent and the third respondent, wherein, the second respondent expressed no objection for the permanent absorption of the petitioner and one other employee who were then on deputation with the third respondent-Federation with effect from 1.2.1981.

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In the said communication dated 28.12.1985, in paragraph 2, the second respondent has mentioned the status of the petitioner and other employee vis-a-vis the first respondent-State Government as under:

> "2. They cease to be Government servant severing all connection (including their lien) in the Department of Industries and Commerce with effect from the date noted against them in Column 4 above."

Again in paragraph 4 of the communication dated 28.12.1985, it has been stated to the effect that, "The Managing Director, Tamilnadu Cooperative Milk Producers Federation Ltd Madras is requested to issue necessary orders absorbing the above individuals permanent in their Federation with effect from the dates noted against each and send a copy of the orders to this Department for reference at an early date."

6. Thereafter, the third respondent issued a circular dated 12.6.1986 which mentions the names of the Government employees who were on foreign service/deputationist with the third respondent-Federation, whom exercised their option to become regular employees of the third respondent-Federation. In the very same communication, the third respondent, after reproducing the terminal benefits which are applicable to them as per G.O.Ms.No.1921, dated 8.11.1983, made it clear that subsequent to the date of their absorption in the third respondent-Federation, necessary action had to be taken to enroll them in the E.P.F. Account of the third respondent-Federation with effect from 1.6.1986 onwards. All the Unit officers were requested to take immediate action to implement the scheme mentioned therein.

7. Subsequently, the third respondent-Federation issued yet another communication dated 29.12.1987 to all its Unit officers as well as the Funds Section, Head Office, stating that the option exercised by the persons listed out in the said communication for absorption not having been finalised by the third respondent, the instruction issued in the circular dated 12.6.1986 was cancelled for administrative reasons and reversed forthwith in order to restore the status-quo-ante in regard to those Government servants.

8. Be that as it may, the petitioner continued to serve the third respondent-Federation though at frequent intervals, from the year 1991, the petitioner was expressing his desire to go back to his parent Department. The petitioner reached the age of superannuation on 30.6.1997. Prior to that, on 20.3.1997, the petitioner gave one other representation for restoration of his status as Government servant. The said representation of the petitioner was not acceded to either by the third respondent-Federation or by the first and second respondents. Instead, by communication dated 14.5.1997, the second respondent intimated to the third respondent that after the absorption of the petitioner in the services of the third respondent, he ceased to be the Government servant severing all his connections with the second respondent and therefore, it is for the third respondent-Federation to issue orders for permanent

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absorption and for settlement of his terminal benefits.

9. It is in the above stated background, the petitioner approached the Tribunal by filing the present Original Application No.4381 of 1997 with a prayer to direct the second respondent herein to call him back to his parent Department and permit him to retire in his parent Department with all consequential benefits.

10. One other relevant factor to be mentioned is that after the formation of the third respondent-Federation, such of those Government servants who did not opt for permanent absorption in the third respondent-Federation, made a challenge to G.O.Ms.No.1921, dated 8.11.1983, before the Tribunal. The Tribunal upheld the challenge and allowed the application of those employees in its order dated 26.6.1992 passed in T.A.No.704 of 1991, etc.

11. The State Government preferred an appeal as against the said order of the Tribunal in Civil Appeal No.1387 to 1395 of 1993 and Civil Appeal No.1396 to 1404 of 1993. In the said Civil Appeals, the Supreme Court took the view that a Government servant cannot be deprived of his status as civil servant without his consent, but in the facts and circumstances of the case in which those employees were placed at the relevant point of time, the Supreme Court felt that the only course left open for the employees was to accept the service under the Federation as permanent employees and that would be the practical way to solve the problem by holding that all the employees deemed to have opted to join the services of the Federation. The Supreme Court thereafter considered the question as to whether the terminal benefits offered in G.O.Ms.No.1921, dated 8.11.1983 was reasonable or arbitrary in any respect and ultimately upheld that Government Order except striking down paragraph 3(f) by holding that the employees, after their permanent absorption to the Federation, were entitled to the benefit of liberalised pension rules if any, in future.

12. In the above stated background, when the petitioner preferred the present Original Application, the Tribunal, by taking note of the communication of the second respondent dated 14.5.1997, took the view that the said communication snapped the lien of the petitioner with the parent Department retrospectively from 1.2.1981, that having regard to the views expressed by the Supreme Court, the petitioner should also be deemed to have opted to join the Federation and on that basis, rejected the petitioner's Original Application in O.A.No.4381 of 1997.

13. Ms.A.Arul Mozhi, learned counsel appearing for the petitioner, while assailing the impugned order of the Tribunal, brought to our notice G.O.Ms.No.126, Animal Husbandry and Fisheries Department, dated 4.8.2000 and G.O.Ms.No.66, Labour and Employment Department, dated 24.3.2004, in which three other employees, namely Dr.P.Subramanian, Dr.H.Sankaran and one Thiru.K.Sivagaminathan, who were also covered by the absorption order dated 12.6.1986, were permitted to retire as Government servants by

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restoring their lien as Government servants, and contended that the petitioner alone was discriminated against. The learned counsel also stated that apart from those three persons, some other employees who were also covered by the order of absorption dated 12.6.1986, were also permitted to get their status restored as Government employees and were allowed to retire as Government servants in order to gain the benefit of getting terminal benefits as Government servants. According to the learned counsel, though by the circular of absorption dated 12.6.1986, the petitioner and other employees were absorbed into the services of the third respondent-Federation, since the said order of absorption was withdrawn by the subsequent order dated 29.12.1987, the claim of the petitioner for restoration of his status as Government servant ought to have been accepted and he should be permitted to retire as Government servant and not as an employee of the Federation. The learned counsel also contended that the belated communication of the second respondent dated 14.5.1997, which came to be issued one-and-a-half month prior to the date of the retirement of the petitioner on 30.6.1997, cannot alter the right of the petitioner to retire as a Government servant, since the earlier order of the third respondent dated 29.12.1987 in cancelling the order of absorption dated 12.6.1986, not having been cancelled by the first respondent-Government, the petitioner had every right to insist that his status as Government servant continued to exist till the date of his superannuation, namely on 30.6.1997.

14. As against the above submissions, the learned Special Government Pleader appearing for the first and second respondents, contended that neither G.O.Ms.No.126, dated 4.8.2000 nor G.O.Ms.No.66, dated 24.3.2004, can be relied upon as the said Government Orders being not in accordance with the Fundamental Rules relating to the lien of a Government servant, as is stipulated in Fundament Rule 14-A, cannot be quoted as a precedent by the petitioner. According to the learned Special Government Pleader, one illegality cannot enure to the benefit of the petitioner for committing another illegality.

15. The learned Special Government Pleader also would contend that after the issuance of G.O.Ms.No.1921, dated 8.11.1983, the second respondent issued letter dated 28.12.1985, making it clear that the petitioner and one other employee ceased to be Government servants and severed all their connections including their lien with the second respondent with effect from 1.2.1981, which was acted upon by the third respondent-Federation in its order of absorption dated 12.6.1986 of the petitioner along with 26 other employees. The learned Special Government Pleader would therefore contend that when once the lien of the petitioner with the State Government got snapped, there was no question of restoring the same either at the instance of the third respondent-Federation or at the instance of anybody else.

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16. Learned Standing Counsel appearing for the third respondent-Federation adopted the arguments of the learned Special Government Pleader and contended that by the issuance of the Federation's circular dated 12.6.1986, the petitioner became an employee of the third respondent-Federation, that he was granted subsequent promotions, that the petitioner who at the time of his superannuation was working as Assistant Manager, having retired as such, it is too late in the day for the petitioner now to claim for the restoration of his status as Government servant. The learned Standing Counsel therefore contended that the impugned order of the Tribunal does not call for any interference.

17. Having heard the learned counsel for the petitioner, learned Special Government Pleader appearing for respondents 1 and 2 and learned Standing Counsel appearing for third respondent, we are convinced that the impugned order of the Tribunal is fully justified and the same does not call for any interference.

18. At the outset, we want to state that the status of a Government servant and his lien on his appointment to the post of Government servant is governed by Fundamental Rule 14-A and that the petitioner would stand or fall by the said provision (i.e. F.R.14-A) vis-a-vis the proceedings issued by the respondents 1 to 3.

19. F.R.14-A reads as under:

> "14-A. (a) Except as provided in clauses (c) and (d) of this rule a Government servant's lien on a post may, in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.
>
> (b) Deleted.
>
> (c) Notwithstanding the provisions of Rule 14(a), the lien of a Government servant holding substantively a permanent post shall be terminated while on refused leave granted after the date of retirement under Rule 86 or corresponding other rules. Vide G.O.829, Personnel and Administrative Reforms Department, dated 26.8.1985.
>
> (d) A Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Government or the Central Government or any other State Governments) outside the cadre on which he is borne."
>
> Ruling
>
> "The provision of Fundamental Rule 14-A apply only so long as a Government servant remains in Government service. In cases where permanent Government servants are permitted to be permanently absorbed in non-Government service in the public interest it should be incumbent on the foreign employer to consult the parent

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employer before issuing orders absorbing the Government servant permanently in his service. The lien of the Government servant in the permanent post under Government stands automatically terminated with the cessation of Government service, that is, from the date of permanent absorption.

The Government servants absorbed permanently under the autonomous Corporations or Undertakings owned by State or Central Government need not be asked to tender a formal resignation of their post under the State Government as the issue of orders of absorption and acceptance of the same by the Government servant would be construed as surrender of their rights as Government servants. From the date of such absorption; payment of pension and leave salary contribution shall be stopped, as he will cease to be a Government servant.

Such termination of lien in the Government service will be without prejudice to his entitlement to retirement benefits admissible under G.O.Ms.No.569, Finance, dated the 28th April 1961 as amended subsequently."

(G.O.Ms.No.907, Finance (F.R.1), Finance, dated 13th August, 1976.)

The amendment hereby made shall be deemed to have come into force on the 9th July 1974."

20. A reading of Rule 14-A(a) makes it clear that under no circumstance, the lien of a Government servant can be terminated even with his consent except subject of course to the provisions contained in Clause (c) and Clause (d) of F.R.14-A. Sub-clause (c) is not applicable to the case of the petitioner. The petitioner however is governed by the provisions contained in sub-clause (d) to F.R.14-A. A reading of sub-clause (d) to F.R.14-A makes it clear that in the event of a Government servant acquiring a lien on a permanent post outside the cadre borne by him, then his lien on the post held by him in the Government, would stand automatically terminated on such acquisition. In other words, the petitioner acquired his permanent status in the third respondent-Federation by virtue of the option exercised by him pursuant to G.O.Ms.No.1921, dated 8.11.1983 and by the acceptance of the said option by the third respondent by issuance of the circular dated 12.6.1986, his lien on the post held by him in the second respondent stood automatically terminated. To put it differently, the operation of sub-clause (d) of F.R.14-A would create a fiction by which the happening of an event of acquisition of lien on a permanent post in some other Department outside the Government, would automatically snap the status of the petitioner as a Government servant from the moment such acquisition in the Department outside the service of the Government.

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21. Therefore, when after the issuance of G.O.Ms.No.1921, dated 8.11.1983, the second respondent in the communication dated 28.12.1985 expressed concurrence for acceptance of the option of permanent absorption of the petitioner in the third respondent-Federation and also making it clear that all his connections in the second respondent-Department including his lien of service with it, got severed once and for all and the said concurrence was acted upon by the third respondent-Federation in its circular dated 12.6.1986, by absorbing the petitioner along with 26 other employees that had put an end to the status of the petitioner as a Government servant on and from 1.2.1981. When once the status of the petitioner as a Government servant got snapped by virtue of operation of F.R.14-A, there was no question of the third respondent-Federation passing any orders, much less the order dated 29.12.1987 for cancelling the earlier order of absorption dated 12.6.1986 or for restoring the status-quo-ante of the petitioner as a Government servant.

22. The said proceedings of the third respondent dated 29.12.1987 has no legs to stand and the said proceedings having been issued in violation of F.R.14-A, cannot be relied upon by the petitioner for claiming any relief in the Original Application as well as in this Writ Petition.

23. When the status of the Government servant and the lien of such a Government servant is governed by F.R.14-A, we are constrained to hold that the status of such other employees who were granted any benefit under G.O.Ms.No.126, dated 4.8.2000 and G.O.Ms.No.66, dated 24.3.2004, cannot be held to have been issued in accordance with the statutory Rules governing the status of a Government servant. When that is the legal status of those Government Orders, no reliance can be placed upon those Government Orders for extending any such benefit granted under those orders to the petitioner. Therefore, we are not in a position to consider the claim of the petitioner by relying upon those Government Orders and as rightly conceded by the learned Special Government Pleader, such illegal orders cannot enure to the benefit of the petitioner for committing another illegality. Therefore, we are unable to accede to the submissions of the petitioner for granting any relief by relying upon those Government Orders.

24. As far as the communication dated 14.5.1997 of the second respondent, in the light of the earliest communication dated 28.12.1995 issued by the second respondent, expressing concurrence for absorption of the petitioner along with one other employee in the service of the third respondent-Federation, making it clear that the petitioner's lien on the Government post had come to an end with effect from 1.2.1981, it cannot be held that the second respondent gave concurrence for the absorption of the petitioner only in the subsequent communication dated 14.5.1997. In other words, the second respondent expressed concurrence for absorption of the petitioner as early as on 28.12.1985 and the said concurrence was also acted upon by the third respondent-Federation when it issued the circular

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of absorption dated 12.6.1986. Therefore, the petitioner cannot be heard to say that the second respondent expressed concurrence only in the communication dated 14.5.1997. The communication dated 14.5.1997 has only reiterated its earlier stand expressed in the communication dated 28.12.1985. Therefore, the said submission of the petitioner cannot also be accepted.

25. In the light of our above conclusions, we do not find any merit in this Writ Petition in challenging the impugned order of the Tribunal. The Writ Petition therefore deserves to be dismissed.

26. During the pendency of the Writ Petition, as per the interim order of this Court, the petitioner was paid gratuity, pay commission arrears and encashment of leave. In all, a sum of Rs.1,48,744.75, was paid as per the Federation Rules applicable. Inasmuch as we have held that the petitioner became permanent employee of the third respondent-Federation, the third respondent is bound to settle all the other terminal benefits as well, including the pension of the petitioner as per the Federation Rules based on the superannuation of the petitioner on and from 30.6.1997. The third respondent-Federation is therefore directed to settle all the other terminal benefits to the petitioner within one month from the date of receipt of a copy of this order.

27. Inspite of our above conclusions, learned counsel for the petitioner still contended that the petitioner should be given liberty to approach the Government and seek for restoration of his status as a Government servant as was granted to other persons in G.O.Ms.No.126, dated 4.8.2000 and G.O.Ms.No.66, dated 24.3.2004. It is open for the petitioner to work out his remedy if he is so advised by approaching the State Government, which shall be considered by the State Government on its own merits and in accordance with law.

28. With the above observations and the directions, the Writ Petition is dismissed. No costs.

cs

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary,
   State of Tamil Nadu,
   Industries Department,
   Fort St.George,
   Chennai-600 009.

2. The Commissioner and Director of
     Industries and Commerce,
   Chepauk, Chennai-5.

3. The Managing Director,
   Tamil Nadu Co-operative Milk Producers
    Federation Limited,
   Aavin Illam, Milk Colony,
   Chennai-600 051.

4. The Registrar,
   The Tamil Nadu Administrative Tribunal,
   High Court, Chennai-104.

+1 cc to Ms.A.Arul Mozhi, Advocate Sr.No.34575.

+1 cc to Mr.R.Madanagopal, Advocate Sr.No.34441.

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